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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Plaintiffs, vs. GERALD ARMSTRONG, Defendant.	CASE NO. C 420 153 REPLY OF BENT CORYDON TO OPPOSITION TO MOTION FOR AN ORDER DIRECTING PARTIES TO FILE EXECUTED DUPLICATE ORIGINAL OF MUTUAL RELEASE AND SETTLEMENT OF ALL CLAIMS Date: February 21, 1989 Time: 9:00 a.m. Dept: 56

PREFACE

On the one hand, Plaintiffs[1/] ask this Court to strictly enforce the stipulated order to seal the Court file in this matter, notwithstanding that there was no judicial finding warranting such sealing. On the other, Plaintiffs ask the Court to ignore another stipulated order, namely that the Mutual Release

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[1/] For ease of reference, the Church of Scientology of California and Mary Sue Hubbard shall be collectively referred to as Plaintiffs herein.

of All Claims and Settlement Agreement be filed. Indeed, even though that order further provided that the Court would retain jurisdiction to enforce said agreement, Plaintiffs have now "sua sponte" decided that that Court Order should not be enforced.

Plaintiffs must believe that there are two sets of rules governing court procedures depending on the result they seek.

ARGUMENT

Plaintiffs assert three bases for their Opposition to CORYDON's Motion:

(1) That CORYDON has no standing to ask for this order;

(2) That the failure to file the Mutual Release Agreement should be ignored; and

(3) That the document sought, if ordered to be produced and filed, should be excluded from this Court's general unsealing order.

These points are all without merit.

I

CORYDON HAS STANDING TO ASK THE COURT TO ORDER THE FILING OF THE AGREEMENT

This Court has already ruled that CORYDON has demonstrated adequate standing to examine the previously sealed files in this action. (See Exhibit A, Transcript of Proceedings of November 9,

1988 at P. 7, lines 17-25.) As such, CORYDON is entitled to see the file in its entirety, and to identify omissions for the Court. Plaintiffs can no more claim, in equity, that CORYDON's right does not extend to documents which should have been filed then they could remove documents already filed and claim CORYDON has no right to see them.

Alternatively, insofar as the Court itself previously ordered that the document be filed and that its enforcement be subject to continuing Court review, CORYDON is bringing to the Court's attention Plaintiffs' disregard of its orders so that the Court may determine whether, as Plaintiffs contend, they can seek, then ignore, the Court's orders.

Standing is not an issue.

II

PLAINTIFFS' ARGUMENT THAT IT NEED NOT FILE THE AGREEMENT PURPORTS TO REPLACE JUDICIAL PROCESS WITH UNILATERAL FIAT AND SHOULD BE DISREGARDED.

Plaintiffs ask this Court to ignore the Order Dismissing Action with Prejudice (Exhibit "B") as to the portion thereof regarding the filing of the Mutual Release. They justify this disregard of a Court Order by saying, in essence, that since it was stipulated order, so long as the other party doesn't object they can ignore it with impunity. We are further asked to believe

that because Judge Breckenridge permitted the return of the archive documents[2/] to go forward knowing that the Release had not been filed, that he agreed that the filing order was superfluous and could be ignored. The Court's minute order of December 17, 1986, on which Plaintiff relies, makes no such statement and did not vacate any portion of the Order Dismissing Action. A copy of that Minute Order is attached hereto as Exhibit "C".

Notwithstanding Plaintiffs' cavalier attitude to that Court Order, their position as to the order sealing the Court file reflects a very different view. As to that order the Court may recall Plaintiffs have argued that it cannot be touched, indeed it is not within the Court's power to modify or vacate it because it was part of the parties bargained for settlement. That was the argument this Court rejected in connection with the original motion to unseal the within file. See Transcript of November 9, 1988 proceedings attached hereto as Exhibit "A". By persisting in this argument, it would seem Plaintiffs are advancing a theory under which not only can they ignore orders of the court but which gives them more power over the files of this action than has the Court! However, although untenable and self-serving, even Plaintiffs' theory that a stipulated order can be ignored if the parties "unstipulate" doesn't support the result they seek, since Gerald Armstrong, the other signatory to the agreement in issue, has not opposed the pending motion. Accordingly, we may assume that he does not wish that order ignored.

[2/] As previously briefed, the term archive document refers to the allegedly coverted documents which was the basis of the original.

Not surprisingly, Plaintiffs have cited no authority in support of their position.

III

THE MUTUAL RELEASE AND SETTLEMENT AGREEMENT SHOULD NOT BE SEALED.

With respect to the issue of sealing the Mutual Release and Settlement Agreement, Plaintiffs claim, two years after the fact, that they are still entitled to a sealing order but, as before, they offer no reason for this view whatsoever. They are correct in saying that such agreements have been frequently sealed in recent years. However, as Champion v. Superior Court (1988) 247 Cal.Rptr. 624 laments, such routine sealing is contrary to public policy.[3/] The court stated:

> "The decision in Mary R. v. B. R. Corp (1983) 149 Cal.App.3d 388, 196 Cal.Rptr. 871, reminds us that, however appealing it may be to merely accept a stipulation by the parties to seal a record, the temptation must be resisted. . . [quoting] 'We believe it clearly improper, even on stipulation of the parties, for the court to issue an order designed not to preserve the integrity and efficiency of the administration of justice [citation] but to

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[3/] Plaintiff cites Champion for the proposition that sealing is frequently done thus giving the impression that the case supports that practice. The contrary is true.

subvert public policy. . .'" 247 Cal.Rptr. at 630 citing Mary R., 149 Cal.App.2d at 316, 196 Cal.Rptr. 871. (emphasis added).

No sufficient reason was offered in the December 11, 1986 hearing for the sealing of the court files and, in fact, the sealing of the Mutual Release Agreement wasn't even separately discussed. Accordingly, CORYDON maintains that this Court is entitled to enforce the order to file the Agreement and, absent an appropriate showing, should not order it to be sealed.

IV

THE COURT HAS INHERENT POWER TO ORDER THE AGREEMENT PRODUCED TO DETERMINE WHETHER IT IS ILLEGAL OR A VIOLATION OF PUBLIC POLICY.

Although denying that the terms of the Franks Agreement are the ones in issue, Plaintiffs go to great pains to argue that the terms thereof, including the requirement to avoid service of process and a $50,000 liquidated damages provision for being amenable to service, are valid and enforceable. This is principally based on Plaintiffs' surprising reading of the clause requiring that the signatory not be "amenable" to service of process. That is to say, that Plaintiffs equate not being amenable to process with not facilitating service of process. (Opposition at p.11). However, that is clearly not the ordinary meaning of the phrase "not amenable to service of process" which

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refers to the person who is outside the jurisdiction of the court and/or who actively seeks to frustrate service of process.

Accordingly, the import of the Franks Agreement is that, on pain of a $50,000 penalty, the signatory is persuaded to avoid service of process. Consequently, if the signatory is a witness as defined in Penal Code § 136, the Agreement is a crime by the Church of Scientology of California under California law. Penal Code § 136.1. Matter of Holmes (Second Dist., 1983) 145 Cal.App.3d 934, 942, 193 Cal.Rptr. 790, 795. A witness is defined at § 136 as follows:

> "'Witness' means any natural person, (i) having knowledge of the existence or nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for any purpose, or (iii) who has reported any crime to any peace officer, prosecutor, probation or parole officer, correctional officer or judicial officer, or (iv) who has been served with a subpoena issued under the authority of any court in the state, or of any other state or of the United States, or (v) who would be believed by any reasonable person to be an individual described in subparagraphs (i) to (v), inclusive."

Where, as here, Armstrong's declarations under oath include knowledge of facts relating to crimes by Scientology entities and

individuals, there is no doubt that he meets the definition of witness. While there are many other such instances, i.e., see Exhibit "E" hereto which includes two declarations showing knowledge of facts regarding the false report of a crime.

Even if not criminal, such oppressive terms are certainly a violation of public policy. As written, the Franks Agreement subjects Franks to the intolerable uncertainty that, regardless of how he responds to attempted service, he may be hauled into court for being, in Plaintiffs' view, "amenable" to process. Given the notoriety of Scientology as a litigious entity and given its enormous financial resources, these terms subject Franks to an oppressive uncertainty not consistent with public policy.

Furthermore, where as here such settlement terms have certainly been imposed on all the highest ranking ex-Scientologists with knowledge of facts about the organization (see Exhibit "H" to Motion), and where sealing orders have been obtained in all litigated cases (as observed in the December 11, 1986 transcript), then the undeniable effect is to obstruct both discovery and legitimate inquiry by other litigants and the

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interested public into the actions of Scientology entities.[4/] Such a scheme is an obstruction of justice and the isolated agreement must be examined as part of the whole.

Further indications that the failure to file the Mutual Release is part of a scheme to obstruct justice can be seen in the manipulations used by Plaintiffs to obtain the return of the Exhibits as well as the archive documents even though an appeal was pending on the denial of damages on their complaint. Consider the following sequence of events:

1. Armstrong's cross-complaint was dismissed in return for a Mutual Release of All Claims even though Plaintiffs preserved their right to appeal the denial of damages. But would Armstrong's counsel really have advised him to give up his cross-claims while agreeing to let Plaintiffs pursue the denial of damages unless he knew they would not prosecute the appeal?

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[4/] Widespread sealing orders were revealed in the colloquy regarding the stipulated sealing order:

> "THE COURT: ... What is it that you have in mind, (sealing) the file itself?
>
> MR. HERTZBERG: Yes, Your Honor. That is the procedure that the Church has insisted on and all courts have agreed to in various other Scientology cases involving Mr. Flynn and others which have been settled."

Transcript of Proceedings, attached hereto as Exhibit "D", page 6, lines 23-28.

2. Even though the appeal was pending, Plaintiffs get back the archive documents and the Exhibits because it was stipulated that, if the complaint were to be retried the Exhibits wouldn't be needed???? (See Transcript of December 11, 1986 at page 4, lines 3-17, Ex. D hereto). Once again, this representation rings false unless there would, in fact, be no attempt to prosecute the appeal.

3. As recited in Plainitffs' opposition to another pending motion for the return of the Exhibits, the appeal was dismissed as premature right after the settlement (but before being notified of the settlement) on the ground that the appeal court wouldn't entertain it until the entire case was adjudicated.

4. Since the cross-claim had been dismissed, Plaintiffs then refile the appeal thus barring collateral estoppel, barring witnesses from speaking, hiding the evidence and sealing the file but never prosecute the appeal.

The inescapable conclusion is that preserving Plaintiffs' right to appeal was a subterfuge to prevent collateral estoppel from attaching while permitting Plaintiffs to preclude any

legitimate inquiry into the matters herein as they are still seeking to do. The "gag order" in the Mutual Release was an integral part of this plan.

The issue of the legality of the agreement would, of course, be better evaluated if the actual agreement were before the court and this court, being apprised of potential illegality of an agreement over which it has jurisdiction may, sua sponte, initiate an inquiry into its legality. Morey v. Paladini (1922) 187 Cal. 727, 734, 203 P.760; LaFortune v. Ebie (1972) 26 Cal.App.3d 72, 75 Cal.Rptr. 588, 589.

CONCLUSION

This Court should be alert to Plaintiffs' efforts to manipulate the procedures and records of the Court to suit their own purposes in contravention of public policy and should not permit it. A valid order of this court has been ignored and this court should enforce it.

In addition, CORYDON, a person whose interests are affected by that Mutual Release, has raised substantial issues regarding its potential invalidity. Since it is an of an agreement over which this Court has jurisdiction, this Court should exercise its inherent power to inquire into the matter. Whether that document,

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once produced, should be sealed might not best be determined in vacuo. Nevertheless, to the extent that the sealing would subvert judicial process and obstruct justice, then no such protection is warranted.

In summary, CORYDON urges this Court to order the document produced and filed.

DATED: February 16, 1989

SAYRE, MORENO, PURCELL & BOUCHER

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the county of Los Angeles, State of California, I am over the age of 18 and not a party to the within action; my business address is 10866 Wilshire Blvd., 4th Floor, Los Angeles, CA 90024.

On February 16, 1989, I served the foregoing document(s) described as:

REPLY OF BENT CORYDON TO OPPOSITION TO MOTION FOR AN ORDER DIRECTING PARTIES TO FILE EXECUTED DUPLICATE ORIGINAL OF MUTUAL RELEASE AND SETTLEMENT OF ALL CLAIMS

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED

__x__ (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

Executed on February 16, 1989, at Los Angeles, CA.

_____ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on _____, 1989, at Los Angeles, CA.

__x__ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ (FEDERAL) I declare that I am employed in the offices of a member of the bar of this court at whose direction the service was made.

R. P. Trotter

R. P. Trotter

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